

State Court Adopts Code of Conduct

BILL DRIES | *The Daily News*

The last time the ethics rules for Tennessee judges were rewritten the Soviet Union still existed and Tennessee Supreme Court justices ran in contested elections.

The Tennessee Supreme Court this month ended a two-year review of the state court system's code of judicial conduct by adopting the new rules for the conduct of judges across the state. It is the first major revision since 1990.

The new code, known as Tennessee Supreme Court 10, takes effect July 1. It reflects ongoing national debates about the impact of campaign contributions on the conduct of judges and how those contributions and other factors should be weighed when a judge is asked to recuse him or herself.

Tennessee Supreme Court Chief Justice Cornelia Clark said the new rules are part of "maintaining a high standard of judicial ethics."

"We believe these changes to the code of Judicial Conduct will provide Tennessee judges with greater guidance for conducting business of the court in a fair, impartial and ethical manner," she said in a statement.

Tennessee judges at the trial level and appellate levels must put in writing their specific reasons for denying a motion for recusal. And that denial can get an expedited appeal if the attorney seeking the recusal wants a ruling on the appeal before a trial begins.

Requesting that a judge hand a case off to another judge is something attorneys consider carefully because of likely having to practice before the same judge on other matters.

"That puts you in a tough spot," said Tennessee Bar Association President Danny Van Horn of Memphis. "Folks were pretty hesitant to ask a judge to recuse themselves, understandably."

Van Horn, of the Butler, Snow, O'Mara, Stevens and Cannada PLLC law firm, said judges have an obligation to prevent attorneys from trying to select the best venue by moving for recusal.

"Judges have an obligation to hear cases. They have to balance their obligation to hear cases against the rights of folks to have a fair and impartial judge decide their matter," he said.

The issue was the most discussed and deliberated of any by the TBA, Van Horn said.

The American Bar Association's model code on



judicial ethics four years ago prompted the Tennessee legal community's discussion.

The other factor was a recent U.S. Supreme Court decision in a case in which a West Virginia Supreme Court chief justice refused to recuse himself.

In *Caperton v. A.T. Massey Coal Co.*, West Virginia Supreme Court Chief Justice Brent Benjamin did not recuse himself from the case even though the president of Massey Coal contributed \$3 million to Benjamin's successful judicial election campaign in 2004.

The West Virginia high court voided a \$50 million verdict against Massey and Benjamin was among the majority on the court who prevailed.

The U.S. Supreme Court in 2009 overturned the decision and sent it back to the high court for a new appeal to be heard with Benjamin recused.

Prior to the decision, recusal disputes recognized by the U.S. Supreme Court centered on whether a judge had any kind of direct financial gain at stake from the dispute before the court.

The Tennessee Supreme Court had some decisions of its own to make. The TBA recommendations differed in some areas from those of the Tennessee Judicial Conference, representing judges, including on the new rules governing political involvement by judges.

Judges are barred from making contributions to political campaigns or organizations. They can buy tickets to attend campaign events.

"The Tennessee Supreme Court came down by and large with the plan that was proposed by the Tennessee Bar Association as opposed to some of the changes that the Tennessee Judicial Conference wanted," Van Horn said, adding there was broad agreement on most points.